



**Meeting Minutes  
Town of North Hampton  
Zoning Board of Adjustment  
Tuesday, June 22, 2010 at 6:30pm  
Mary Herbert conference Room**

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7  
8 These minutes were prepared as a reasonable summary of the essential content of the meeting, not as a  
9 transcription. All exhibits mentioned in these minutes are a part of the Town Record.

10  
11 **Attendance**

12  
13 **Members present:** Robert B. Field, Jr., Chair; Michele Peckham, Vice Chair; Richard  
14 Stanton, David Buber, and George Lagassa

15  
16 **Members absent:** None

17  
18 **Alternates present:** Jennifer Lermer

19  
20 **Staff present:** Wendy Chase, Recording Secretary.

21  
22 Mr. Field convened the Meeting at 6:30pm.

23  
24 Mr. Field invited the Board Members and the audience to rise for Pledge of Allegiance.

25  
26 **Preliminary Matters; Procedure; Swearing in of Witnesses; Recording Secretary Report**

27  
28 Mr. Field explained that this Meeting was more of an administrative session than a deliberative session,  
29 and asked Alternate Member, Jennifer Lermer to be seated at the table to participate in the discussions.  
30 Mr. Field thanked Ms. Lermer for serving as Recording Secretary pro-tem at the June 9, 2010 Meeting.

31  
32 Ms. Chase stated that the June 22, 2010 ZBA Agenda was properly posted on June 17, 2010 at the Town  
33 Office, Town Clerk's Office and Library. It was not published in the newspaper because there were no  
34 new applications.

35  
36 **Unfinished Business**

37  
38 There was no unfinished business for the Board to act on.

39  
40 **New Business**

41  
42 There was no new business for the Board to act on.

43 **Other Business**

44

45 **Minutes**

46

47 Mr. Field asked that a correction be made on line 40 of the May 25, 2010 Meeting Minutes that were  
48 approved on June 9, 2010. The vote of 4 in favor, 0 opposed and 2 abstentions should read 3 in favor, 0  
49 opposed and 2 abstentions.

50

51 **June 9, 2010 Meeting Minutes** – Mr. Stanton commented on a procedural flaw and referred to line  
52 numbers 110-112 of the June 9, 2010 Meeting. Mr. Field seated Ms. Lerner first before recusing himself  
53 resulting in a six Member Board. Mr. Stanton explained that Mr. Field should have first recused himself;  
54 Ms. Peckham assumes the Chair; Ms. Peckham seats Ms. Lerner for Mr. Field. The Board agreed to  
55 follow that procedure if the same situation arose in the future.

56

57 Mr. Field commented that there was communication sent to the Board regarding case #2010:02 – Peter  
58 Horne, and should be acted upon after his recusal along with reviewing/approving the portion of the  
59 Minutes relating to that case.

60

61 Mr. Field recused himself.

62 Ms. Peckham assumed the Chair.

63 Ms. Peckham seated Ms. Lerner for Mr. Field.

64

65 The Board Members corrected typographical errors.

66 Mr. Buber stated for the record that he mistakenly referred to Dr. Leonard Lord (line 423) at the June 9,  
67 2010 Meeting, when in fact it should be Michael Cuomo, from the RCCD.

68

69 Ms. Peckham said that the change cannot be made in the Minutes, but it can be corrected at the next  
70 Meeting when all parties including Mr. Horne and Mr. Pelech are present to hear it.

71

72 **Mr. Stanton Moved and Ms. Lerner seconded the Motion to approve the June 9, 2010 Meeting**  
73 **Minutes as amended.**

74 **The vote was unanimous in favor of the Motion (5-0).**

75

76 The Board was in receipt of a letter, dated June 18, 2010, from Attorney Bernard Pelech requesting a  
77 continuance of the Horne Case #2010:02 to the July 27, 2010 Meeting.

78 **Mr. Stanton Moved and Mr. Lagassa seconded the Motion to continue Case 2010:02 – Peter Horne to**  
79 **the July 27, 2010 Meeting.**

80 **The vote was unanimous in favor of the Motion (5-0).**

81

82 Mr. Lagassa reported that he and Mr. Buber visited the Horne property. Mr. Buber added that he and  
83 Mr. Lagassa met at the Horne property on June 15, 2010 at 2:00pm and met with Mr. Horne and Mr.  
84 Pelech who took them on a tour of the property, and they left at 2:45pm.

85

86 When action concerning the Horne case was completed for the evening, Ms. Lerner stepped down. She  
87 remained seated at the table during the remaining administrative session.

88

89 Ms. Peckham reseated Mr. Field.

90 Mr. Field resumed the Chair.

91

92 Mr. Field commented on his Meeting with the Town Administrator, Steve Fournier regarding the  
93 protocols of the utilization of Town Staff. Mr. Field said that he wrote a note to Mr. Fournier with  
94 regard to the issues of retaining counsel and he said he hopes Mr. Fournier addresses the issue when  
95 responding to the Board on the suggested protocol between the Board and Town Staff; the matter is still  
96 pending.

97

98 Mr. Field reported to the Select Board, the election of the officers of the ZBA for the coming year, the  
99 appointment of Wendy Chase as Recording Secretary to the ZBA, and the Board nomination of Mr.  
100 George Lagassa as the ZBA representative on the Code of Ethics Ad hoc Committee.

101

102 Mr. Field explained that now that the ZBA is a totally elected Board, the ZBA Members appoint their  
103 own Alternates pursuant to RSA 673:6 II-a, which states *An elected zoning board of adjustment may*  
104 *appoint 5 alternate members for a term of 3 years each, which shall be staggered in the same manner as*  
105 *elected members pursuant to RSA 673:5, II.*

106

107 Mr. Field commented on an E-mail sent from Ms. Lerner to the Board regarding Mr. Ted Turchan's  
108 alternate seat. He said that he did not respond to the E-mail because he thought the Board should  
109 discuss it at a Public Meeting.

110

111 Ms. Lerner questioned whether or not Mr. Turchan was still an Alternate Member since his original  
112 term expired in 2011, and was not replaced when he was appointed to fill Ms. Susan Smith's Primary  
113 Member seat.

114

115 Mr. Field said that he read the February 8, 2010 Select Board Meeting Minutes and it was made clear in  
116 those Minutes that when Mr. Turchan was appointed as a full member of the Zoning Board, he gave up  
117 his status as an Alternate Member.

118

119 Mr. Stanton was under the impression that the Board would need a letter of resignation from Mr.  
120 Turchan in order to terminate his term as an Alternate Member.

121

122 Mr. Field read from the Select Board Minutes regarding the appointment of Theodore Turchan as a  
123 Primary Member to the ZBA. The following action took place *Motion made by Selectman Rineman to*  
124 *appoint Theodore Turchan as a primary member to the North Hampton Zoning Board of Adjustment with*  
125 *a term to expire May, 2010, Seconded by Selectman Coutu, Motion carries 3-0.* Mr. Field said that the  
126 Select Board opted to keep Mr. Turchan as a Primary Member; not just an interim member, which he  
127 could have remained under Mr. Stanton's appointment.

128

129 Mr. Stanton disagreed, and explained that he wrote a letter to the Select Board explaining that he had  
130 acted under the law as Chair to appoint, as an interim measure, and it was up to them to confirm his  
131 temporary authority because only they could follow through on that temporary appointment. Mr.  
132 Stanton said that it is his belief that because Mr. Turchan was an appointed Alternate through the year  
133 2011, that he remains as such. He said that the only thing the Select Board was asked to do was to  
134 confirm, as required by law, that the interim appointment be affirmed.

135

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136 Ms. Peckham said that a Member cannot be a Primary Member and an Alternate Member at the same  
137 time, and the Select Board voted to appoint Mr. Turchan as a Primary Member with a term to expire in  
138 May 2010.

139  
140 Mr. Field noted that the Select Board did not take action in that Mr. Turchan would continue to be an  
141 Alternate Member.

142  
143 Mr. Lagassa said that it is unclear, but believes that a Member cannot be a Primary and an Alternate at  
144 the same time.

145  
146 Mr. Buber concurred with Ms. Peckham and Mr. Field. He said that he also read the Select Board's  
147 Minutes of February 8, 2010, and in his opinion, the intent of the Select Board was to appoint Mr.  
148 Turchan as a Primary Member, and a person cannot serve two capacities at the same time, one as a  
149 Primary Member and one as an Alternate Member.

150  
151 Mr. Field said that Mr. Turchan took an oath when he was appointed as a Primary Member, and he  
152 chose to take the oath as a Primary Member as opposed to his position as an Alternate. Mr. Field said  
153 that he welcomes Mr. Turchan to apply to the ZBA for an Alternate seat.

154  
155 Mr. Field, Ms. Peckham and Mr. Buber each expressed that they had nothing against Mr. Turchan, and  
156 only had positive things to say about his ability as a past Member of the ZBA.

157  
158 Mr. Field explained that Ms. Lerner's term as an Alternate expires in May 2012; Ms. Wood's term  
159 expired May 2010; Mr. Gordon's term expired May 2010; Mr. Buber's seat became available May 2010  
160 when he was elected as a Primary Member; Mr. Turchan's seat was relinquished when he was  
161 appointed to fill Ms. Smith's seat as Primary Member that expired in May 2010. The Alternate seats  
162 available are: two to expire in 2011, and two to expire in 2013.

163  
164 After reviewing RSA 673.6 it was determined and agreed upon by the Board that each Alternate  
165 Member's seat is to be staggered in accordance with the Primary Member's seats. Ms. Lerner's  
166 Alternate seat expires with Ms. Peckham's Primary seat in May 2012. If the Board wished to fill all 5  
167 seats, two Alternates would be needed to fill the same term as Mr. Stanton and Mr. Field to expire in  
168 May 2011, and two Alternates would be needed to fill the same term as Mr. Buber and Mr. Lagassa to  
169 expire in May 2013.

170  
171 The Board was in complete agreement to try and fill all four available Alternate seats because the  
172 advantages far outweigh the disadvantages.

173  
174 Mr. Stanton noted for the record that the NH OEP offers two conferences for Land Use Board Members  
175 including alternates. He said that it is well worth the time to attend, and the Town pays for the  
176 registration fee. Mr. Field said that there is a Statute that allows all Members to get at least six hours of  
177 training.

178  
179 The Board was in receipt of the draft copy of the North Hampton Zoning Board of Adjustment Vacancy  
180 Administrative Procedure that was prepared in 2009 by Mr. Stanton. Mr. Field invited Mr. Stanton to  
181 explain his thought process in developing such draft procedures. Mr. Stanton explained last year's  
182 process in appointing Alternates:

- 183
- Notice the vacancies on the Town's website, Town Office, Town Clerk's Office and Library

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- 184       • The candidates were asked to give a signed and dated written letter of intent to the Zoning  
185       Board within the required “cutoff” date.  
186       • The candidate would be asked to come to a Meeting and stand behind the podium, introduce  
187       themselves and have them explain why they would like to serve as an Alternate and answer any  
188       questions the Board may ask.  
189       • The Board voted on each person in the order that they applied. He said that he thought that  
190       was fair at the time, but it turned out to be the most controversial part of the process.  
191

192 The Board discussed the policy for filling Alternate vacancies.  
193

194 Ms. Peckham suggested that the Applicants submit a resume along with their Letter of interest. Some of  
195 the Board Members thought that to be intimidating. They agreed that each applicant submit a brief  
196 statement of interest and qualifications.  
197

198 Mr. Buber suggested that all applicants should be vetted prior to the Board’s vote to appoint. The Board  
199 agreed.  
200

201 Mr. Field said that all of the action taken by the Board regarding appointments of Alternates will be  
202 conducted at a Public Meeting. The Board agreed.  
203

204 Mr. Field suggested the Board come up with a specified time during the vetting process that each  
205 candidate is allowed to speak at the podium. The Board agreed to allow 3 minutes for each candidate at  
206 the podium followed by questions from the Board, if any. The Board agreed that there will be no public  
207 participation allowed in the process.  
208

209 Mr. Lagassa suggested an expiration date of Friday, July 23, 2010 for interested parties to submit their  
210 Letters of interest so that the Board would have the weekend prior to the July 27, 2010 Meeting to  
211 review them. The Board agreed to endeavor to make decisions at their July 27, 2010 Meeting. The  
212 Board also agreed that they are not compelled to fill all four vacancies.  
213

214 The Board agreed that each applicant would receive notice of the Board’s decision regardless of the  
215 disposition.  
216

217 Mr. Stanton volunteered to make the suggested changes to the *North Hampton Zoning Board of*  
218 *Adjustment Vacancy Administrative Procedure*.  
219

220 Ms. Chase will produce a notice and have Mr. Field review before publicizing the notice for the vacant  
221 seats.  
222

223 The Board decided on the following:

- 224       1. The Zoning Administrator would be the facilitator of the process.  
225       2. Posting of the notice will be at the Town Office, Town Clerk’s Office, Library and Town Website  
226       (www.northhampton-nh.gov)  
227       3. Broadcast the notice on Channel 22, and publish in the Hampton Union on two consecutive  
228       weeks  
229       4. The Letter should be signed with an original signature, be dated, and state a preferred Term (i.e.  
230       2011 or 2013). The Board will not accept Letters sent via e-mail, facsimile, or other form of

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231 electronic transmission. Attached to the Letter should be a brief statement explaining the  
232 reasons of interest and qualifications.

233 5. All Letters must be received at the Town Office (233 Atlantic Avenue) on or before 3:00pm, on  
234 Friday, July 23, 2010.

235 6. Following the Public Meeting, each candidate will be notified in writing of the findings and  
236 appointment decisions made by the Board, if any; and, it should be emphasized that the Board is  
237 not under any legal obligation to make an/or any Alternate appointment(s).

238

239 Mr. Buber suggested adding the Vacancy Administrative Procedures to the Board's Rules of Procedure.  
240 The Board agreed to add it as an addendum to the Rules of Procedure, and would address the issue at  
241 another Meeting.

242

243 Mr. Field said that the Board has received a letter of interest for an Alternate term on the ZBA from  
244 Robert Landman and James Kierstead. Ms. Chase will notify them both of the new process to follow.

245

246 Mr. Field brought up the Non-Public Meeting of the Zoning Board that took place on March 23, 2010.  
247 Mr. Field said that circumstances have transpired where he feels the Minutes should be made public  
248 because the reason for the matter being private no longer exists. He said that Mr. Gould wrote a letter  
249 to the Editor of the Portsmouth Herald on May 3, 2010 and made a statement that would indicate that  
250 he had knowledge of what transpired at the Zoning Board's Non-Public Meeting, and if the Recording  
251 Secretary, Ms. Chase has waived the privacy of that meeting, then the Board no longer has a reason to  
252 keep the Minutes Non-Public. He said that the Board would have to vote to make the Minutes public  
253 information.

254

255 Ms. Peckham said that the comments Mr. Gould made were too general and it's not specific enough to  
256 conclude that Ms. Chase waived the privacy of that Non-Public Meeting.

257

258 Mr. Stanton said that there were other things discussed at that Non-Public Meeting and the Board  
259 properly sealed the Minutes, and the only proper way to handle it is to have the individual or the  
260 individuals involved request that they be made public. Mr. Stanton strongly suggested that there be no  
261 more discussion of what might be in those Non-Public Minutes.

262

263 Mr. Field said that there was information in the public domain that was inaccurately presented. Mr.  
264 Field said that the Statute states that when the reason for sealing Non-Public Minutes is no longer  
265 present then the Minutes should be made available to the public.

266

267 Mr. Buber said after viewing the April 26, 2010 Select Board Meeting, he heard too many references  
268 made that could have come from access to the ZBA's Non-Public Meeting.

269

270 Mr. Field read a portion of the law; *in the event of the circumstances information may be withheld until*  
271 *in the opinion of the majority of the members of the aforesaid circumstances no longer apply.* He said  
272 that the circumstances that existed on March 23, 2010 were disclosed on April 26, 2010.

273

274 Mr. Field handed out copies of the April 26, 2010 Select Board's Meeting Minutes to the Members. Mr.  
275 Field said that misrepresentations were made on a number of things and he is the "party" affected by it,  
276 and would like to see it corrected on the record if it is the wish of the majority of this Board.

277

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278 Mr. Stanton said that there was more than one public employee mentioned. He said that there are  
279 other individuals involved in this matter. Mr. Stanton suggested that if more discussion about it were to  
280 take place; the Board should properly notice a non-public session and it should be taken up then. He  
281 said that the Board is treading on very serious ground, and he feels uncomfortable discussing properly  
282 sealed Minutes at a Public Meeting.

283  
284 Mr. Stanton believed that the Board's discussion on whether or not to make the Non-Public Session  
285 "public" should be conducted in a Non-Public Session.

286  
287 Mr. Buber suggested that the Members of the Board review the Non-Public Meeting Minutes of March  
288 23, 2010 and determine whether or not there is enough of a basis to go into Non-Public Session to  
289 discuss them.

290  
291 Ms. Chase was directed to make copies of the April 26, 2010 Select Board Meeting Minutes for all  
292 Primary Members except for Mr. Lagassa, because he was not a member at the time of the Non-Public  
293 Meeting. Mr. Field informed the Board that they could review the March 23, 2010 Non-Public Minutes  
294 at the Town Office. Ms. Chase will also make copies of RSA 91-A for the Members.

295  
296 Ms. Chase was directed to place the discussion of the March 23, 2010 Non-Public Meeting on the July  
297 27, 2010 Agenda.

298  
299 Mr. Buber suggested that Ms. Chase review the e-mail distribution list and remove those individuals  
300 who are no longer Members.

301  
302 **Mr. Stanton Moved and Mr. Buber seconded the Motion to adjourn at 8:22pm.**  
303 **The vote was unanimous in favor of the Motion (5-0).**

304  
305 Respectfully submitted,

306  
307 Wendy V. Chase  
308 Recording Secretary

309  
310 **Approved July 27, 2010**

311